

REMARKS

Currently, claims 1-43 are pending. This includes independent claims 1, 12, and 25. No independent claims have been amended and allowance of all claims is respectfully requested based on the following remarks.

Claims 1 and 25 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The Office Action contends that “[n]o where in the specification does it state that there is a plurality of players entered into one wagering game, wherein some players are entered via the primary entry method and others are entered via the free AMOE method in the wagering game.” (11/10/2010 Office Action, p. 2.) Respectfully, the limitations of claims 1 and 25 are supported throughout the application and the rejection of the claims pursuant to 35 U.S.C. § 112, first paragraph, should be withdrawn and the claims allowed.

Foremost, the test for determining compliance with the written description requirement is whether the disclosure of the application as originally filed reasonably conveys to the artisan that the inventor had possession at that time of the later claimed subject matter, **rather than the presence or absence of literal support in the specification for the claim language**. MPEP § 2163. Information contained in any one of the specification, claims or drawings of the application as filed may be added to any other part of the application without introducing new matter. MPEP § 2163.06. A *prima facie* case requires a reasonable basis to challenge the adequacy of the written description. MPEP § 2163.04. The MPEP equates this reasonable basis with “a preponderance of evidence why a person skilled in the art would not recognize in an applicant’s disclosure a description of the invention defined by the claims.” MPEP §

2163(III)(A). Further, an applicant shows possession of the claimed invention by describing the claimed invention with all of its limitations using such descriptive means as words, structures, figures, diagrams, and formulas that fully set forth the claimed invention. MPEP § 2163. Importantly, there is no *in haec verba* requirement. Claim limitations can be supported in the specification through express, implicit, or inherent disclosure. Id.

Respectfully, Applicants plainly provide support for the limitation that of the plurality of players, at least one enters the game through the primary method and at least one enters the game through an AMOE. As clearly stated in paragraph 0076, **"a player 120 may pay for the game or obtain access to the game through AMOE."** The specification further explains that, in one embodiment, a computer system executes the various embodiments of the invention. The computer system includes a component for handling "payment, subscription and/or AMOE by players to enter the game sessions." [¶ 0110.] Also, the specification repeatedly stresses that the AMOE player receives the same odds of winning a game as wagering players, [¶¶ 0072 and 0074], and the odds of winning are not dependent on whether or not the player pays the operator to play. [¶ 0035.] Moreover, paragraph 0075 explains that, in another embodiment, the AMOE player can select the game they enter. Clearly, this does not disclose, nor cause one skilled in the art to understand, that the AMOE players are segregated from wagering players. This would frustrate the purpose of the embodiment allowing the AMOE player to choose the game they enter.

Contrary to the Office Action's assertions, paragraph 0022 would not be read by one skilled in the art to indicate that players entering a game via AMOE are segregated

from paying players. At paragraph 0022, Applicants explain that a player entering the game via an AMOE can be entered in "the next starting game session after the AMOE is received and logged by the game operator" or "the game session entered is the next starting game session designated for AMOE game players after the AMOE is received and logged by the game operator." Clearly paragraph 0022 allows for the AMOE player to be entered into a next starting game session or the next game session designated for entry of AMOE players. This does not mean that the players are excluded from playing with wagering players and one skilled in the art would not read the specification this narrowly. Accordingly, the specification would be understood by one skilled in the art to disclose all the limitations of claims 1 and 25. Thus, the rejections of the claims pursuant to 35 U.S.C. § 112, first paragraph, should be withdrawn and the claims allowed.

Claim 36 is rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. While Applicants respectfully disagree with this assertion, in the interest of forwarding prosecution, dependent claim 36 has been amended to claim that the player "replays" the wagering game remotely. Support for this limitation is provided, at least, at paragraphs 0107 and 0108. Thus, the rejection of claim 36 should be withdrawn and the claims allowed.

Independent claim 1 claims a method for conducting a game. A primary method of entry is provided for at least one player into a wagering game. The primary method of entry in the wagering game includes processing a wager having monetary value. An alternative method of entry (AMOE) is also available to the at least one player. The AMOE provides a free method of entry into the wagering game. The AMOE is provided for free and does not comprise a wager. The wager game is then executed for the at

least one player and at least one winner is determined from a plurality of players. At least one of the plurality of players entered the wagering game through the primary method of entry and at least one entered the wagering game through AMOE. Independent claims 12 and 25 contain the same patentably distinct limitations as claim 1.

Providing for a free AMOE not only allows for additional players to enter a game without paying to play but also aids in comporting with regulations regarding making sweepstakes available via means that do not require a purchase. Further, receiving an AMOE from a player allows the entity providing the game to establish a relationship with a player that may lead to the player becoming a paying customer. Additionally, the number of AMOEs a player may submit can be limited to guard against profit loss as well as to encourage a player to possibly submit paid entries as well.

Independent claims 1, 12 and 25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Fisk, WO 00/69535 A1 ("Fisk '535") in view of Koza, U.S. Patent No. 6,767,284 ("Koza '284"). Respectfully, however, the suggested combination fails to disclose all the limitations of Applicants' claims, Fisk '535 teaches away from Applicants' claims, and one skilled in the art would not modify Fisk '535 in view of Koza '284 as suggested by the Office Action because doing so destroys the intent of Fisk '535 and changes its principle of operation. Moreover, the combination evinces hindsight bias.

Fisk '535 discloses a computer network managing multiple simultaneous bingo games having a potentially large number of bingo cards. (Abstract.) In one embodiment, players are supplied with bingo cards for participating in bingo games by manual distribution of the bingo cards to players. The bingo cards are distributed to players via printing the bingo cards on the reverse side of lottery tickets or printed in newspapers and

magazines distributed to the public. (P. 11, ll. 5-15.) Once the player obtains a bingo card, the player enters the bingo game by paying a fee to enter the game. (P. 12, l. 25 P. 13, l. 14.) In addition, the bingo cards may also be pre-paid, in that no additional fee is required to enter the game. (P. 14, ll. 13-14.) After the player has delivered payment, the player receives a receipt for the entry showing they have paid to enter the game. (P. 13, ll. 15-16.) Distribution of the preprinted bingo cards "is expected to enhance the visibility of the bingo game and promote sales of the bingo game particularly when the game is initially announced." (P. 14, ll. 5-6.)

Respectfully, the Office Action is incorrect in its assertion that the combination of Fisk '535 in view of Koza '284 discloses all the limitations of Applicants' claims. In fact, Fisk '535 teaches away from Applicants' claims. Foremost, the Office Action is incorrect in stating that Fisk '535 discloses providing an AMOE to players which does not require a wager to enter a game. As Fisk '535 explains, although it may distribute bingo cards via printing them on the backs of lottery tickets and in magazines and newspapers, **a player cannot play the Fisk '535 bingo card until she pays a wager to enter the game.** (P. 12, l. 25 P. 13, l. 14.) Fisk '535 is silent as to providing entry into the bingo game without the player paying a wager. Fisk '535 is also silent as to a game involving both players entering via paying a wager as well as players entering via AMOE. These failings are not remedied by modifying Fisk '535 in view of Koza '284 as explained below. Accordingly, Fisk '535 fails to disclose all the limitations of Applicants' claim. More importantly, Fisk '535 teaches away from Applicants' claims by requiring all players to pay a wager to enter the disclosed bingo game.

Further, the Office Action incorrectly reasons that modifying Fisk '535 in view of Koza '284 to arrive at Applicants' claims "would have been considered a mere design consideration which fails to patentably distinguish over the prior art of Fisk." (11/10/10 Office Action, p. 6.) As Fisk '535 explains, it intends to distribute bingo cards via printing them on lottery tickets and in newspapers and magazines in order to promote those receiving the cards to wager in the bingo game. There is simply no logical, articulated reason why one skilled in the art would modify Fisk '535 to provide free entry of players into the game by incorporating the disclosure of Koza '284 that players may enter a game by requesting a free entry. Doing so destroys the intent of Fisk '535 that all players wager in order to play the game and changes its principle of operation. Accordingly, one skilled in the art would not make the suggested modification of Fisk '535 in view of Koza '284. Further, any such modification would evince hindsight bias. Therefore, the rejection of independent claims 1, 12 and 25 should be withdrawn and the claims allowed.

Applicants also respectfully submit that for at least the reasons indicated above relating to corresponding independent claims, the pending dependent claims patentably define over the references cited. However, Applicants also note that the patentability of the dependent claims certainly does not hinge on the patentability of independent claims. In particular, it is believed that some or all of these claims may possess features that are independently patentable, regardless of the patentability of the independent claims. For instance, the suggested combination of references fails to disclose the limitations of claim 43 that claims, *inter alia*, entering the at least one player into the wagering game in response to processing the AMOE, wherein the act of entering the at least one player

includes an act of associating an entry in the wagering game with at least one game card in response to processing the AMOE. As explained above, modifying Fisk '535 such that it provides for free entries into the bingo game destroys the intent of the game to require players to wager in order to play the game. Thus, the rejection of claim 43 should be withdrawn and the claim allowed.

With the present Amendment, Applicants respectfully submit that all pending claims are allowable and that the application is in condition for allowance. Favorable action thereon is respectfully requested. Examiner Harper is encouraged to contact the undersigned at her convenience should he have any questions regarding this matter or require any additional information.

Please charge any additional fees required by this Amendment to Deposit Account No. 04-1403.

Respectfully submitted,

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April 11, 2011
Date

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